

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CV-712-BR

WEAVER COOKE CONSTRUCTION, LLC,
Appellant,

v.

EAST CAROLINA MASONRY, INC.,
Appellee.

ORDER

This matter is before the court on Weaver Cooke Construction, LLC's ("Weaver Cooke") appeal from the 26 September 2014 order of United States Bankruptcy Judge Stephani W. Humrickhouse. In that order, the bankruptcy court granted summary judgment in favor of appellee East Carolina Masonry, Inc. ("ECM") on Weaver Cooke's contractual indemnity claim. In another appeal from the same underlying proceeding, the identical indemnification provisions were at issue, and this court held that, among other things, neither N.C. Gen. Stat. § 22B-1 nor the contributing negligence of other parties precluded Weaver Cooke's indemnification claim against the subcontractor. See Weaver Cooke Constr., LLC v. Stock Bldg. Supply, LLC, No. 5:14-CV-537-BR, DE # 53 (E.D.N.C. Aug. 12, 2016). The parties here have raised similar arguments to those raised in the earlier appeal, and the issues are ones of law.¹ Accordingly, for the reasons set forth in the Stock Building Supply case, the 26 September 2014 order of the

¹ ECM additionally argues that (1) under the terms of the subcontract, Weaver Cooke is not entitled to indemnity for injury or damage to ECM's own work, i.e., masonry work, and (2) North Carolina precludes indemnity where the parties, like ECM and Weaver Cooke, are *in pari delicto*. Although ECM raised these arguments in support of its motion for summary judgment, the bankruptcy court did not address them. The court leaves it to the bankruptcy court to consider them, if necessary, in the first instance on remand. See Q Int'l Courier, Inc. v. Smoak, 441 F.3d 214, 220 n.3 (4th Cir. 2006).

bankruptcy court is AFFIRMED IN PART, REVERSED IN PART, and REMANDED for further proceedings.

This 15 August 2016.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt

Senior U.S. District Judge